



December 7, 1999

Mr. Kevin McCalla, Director
General Law Division
Texas Natural Resource Conservation Commission
Post Office Box 13087
Austin, Texas 78711-3087

OR99-3536

Dear Mr. McCalla:

You ask whether certain information is subject to required public disclosure under the Texas Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 130195.

The Texas Natural Resource Conservation Commission (the "TNRCC") received two requests for the name of the person who registered a particular complaint. You assert that the requested information is excepted from disclosure based on section 552.101 of the Government Code in conjunction with the informer's privilege.

This office has interpreted section 552.101 of the Government Code as encompassing judicial decisions recognizing the informer's privilege. Open Records Decision No. 579 (1990). The Texas courts have recognized the informer's privilege. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969). It protects from disclosure the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law-enforcement authority, provided that the subject of the information does not already know the informer's identity. Open Records Decision Nos. 515 (1988) at 3, 208 (1978) at 1-2. The informer's privilege protects the identities of individuals who report violations of statutes to the police or similar law-enforcement agencies, as well as those who report violations of statutes with civil or criminal penalties to "administrative officials having a duty of inspection or of law enforcement within their particular spheres." Open Records Decision No. 279 (1981) at 2 (citing Wigmore, Evidence, § 2374, at 767 (McNaughton rev.

ed. 1961)). The report must be of a violation of a criminal or civil statute. *See* Open Records Decision Nos. 582 (1990) at 2, 515 (1988) at 4-5.

We have reviewed the submitted information. The information appears to concern a report of a possible violation of an environmental law within the TNRCC's enforcement sphere.¹ We therefore find that the TNRCC may withhold the information you marked as identifying the informer.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* §§ 552.353(b)(3), 552.353(c). If the governmental body does not appeal this ruling, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release part or all of the requested information, the governmental body is responsible for taking the next step. Based on the statute the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following 3 things: 1) release the public records; 2) notify the requestor of the exact day, time and place when copies of the records will be provided or when the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839.

If this ruling requires or permits the governmental body to withhold some or all of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex.App.—Austin 1992, no writ).

¹Generally, when a governmental body raises the informer's privilege, a governmental body should point out the specific criminal or civil statute at issue, and explain that the reported violation was made either to the police or a similar law enforcement agency, or to an "administrative official having a duty of inspection or of law enforcement withing their particular spheres. Open Records Decision No 279 at 2 (1981) (citing Wigmore, Evidence, § 2374, at 767 (McNaughton rev. ed. 1961)).

If the governmental body, the requestor, or any other person has questions or concerns about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general strongly prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script, reading "Kay Hastings".

Kay H. Hastings
Assistant Attorney General
Open Records Division

KHH/jc

Ref.: ID# 130195

encl. Submitted documents

cc: Mr. James Gordon
9894 Gordon Lane
Silsbee, Texas 77656
(w/o enclosures)

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(w/o enclosures)